subject thereto under the following provisions of the Laws of the United States, to-wit: The Immigration Act of 1917, in that he is employed by, in, or in connection with a house of prostitution; and that he is an inmate of a house of prostitution."

3.

Section 155, Title 8, United States Code provides,

"In every case where any person is ordered deported from the United States under the provisions of the sub-chapter or any law or treaty, the decision of the Secretary of Labor shall be final."

4.

The Opinion of the United States Circuit Court of Appeals,

"Before EVANS, MAJOR and KERNER, Circuit Judges.

Major, Circuit Judge. This is an appeal from a judgment dismissing a petition for writ of habeas corpus filed on behalf of appellant, Constantinos Karpathiou, an alien. By the proceeding it was sought to test the validity of a warrant issued by the Secretary of Labor for the deportation of appellant upon the ground that he is in the United States contrary to the Act of February 5, 1917, Section 155, Title 8, U. S. C. A., in that appellant has been found managing a house of prostitution, or music or dance hall or other place of amusement or resort habitually frequented by prostitutes or where prostitutes gather.'

Appellant entered this country September 23, 1907, and admittedly is an alien. A hearing was had before a United States Immigration Inspector, at which time the additional charge 'in that he has been found an inmate of a house of prostitution' was made. Prior to the hearing before the Immigration Inspector, affidavits had been obtained from four persons, some of whom had been inmates or employees of the house in question, known as the Willow Inn. At the hearing a

large number of witnesses testified, and during the hearing these affidavits, previously obtained, were offered in evidence. The record does not disclose whether the persons who made these affidavits were all personally present or not, but we assume they were. At any rate, counsel for appellant was asked if he desired to cross-examine such persons. He availed himself of the privilege of cross-examining one of such persons but waived such privilege as to the other three. The one examined repudiated the material statements contained in her affidavit. It is not disputed by appellant but what the evidence contained in the affidavits was sufficient to support at least some of the charges preferred. It is argued, however, that these affidavits were improperly received in evidence and should not have been considered by the Department of Labor, and cannot be here considered in support of the charge.

The impotency of this argument lies in the fact that the courts have recognized it generally as being proper. In connection with such holdings it has been held that the alien is entitled to the privilege of an oral examination of the persons who have made the affidavits. Appellant cites and relies upon the authority of *Hanges* v. *Whitfield*, 209 Fed. 675, but an examination of that case discloses that it is not at variance with the general rule. The effect of that holding was that the affidavits were improperly received in evidence for the reason that the alien was denied the right to examine the witnesses at the hearing. Inasmuch as this privilege was offered appellant in the instant case, and waived by his counsel, we think there can be no question but what the affidavits were properly received in evidence.

In addition to the affidavits, however, there was testimony at the hearing which tended very strongly to support the charge. One witness in particular, an immigration inspector, gave strong and convincing testimony in support of the charge. It would serve no good purpose to relate the details of his testimony—it is sufficient to state it was positive and direct and

in connection with other circumstances testified to at the hearing, was sufficient to justify the conclusion reached and this, irrespective of the affidavits complained of.

It is true, as argued by appellant, that a large number of witnesses, including business men, local officials and acquaintances of appellant, many of whom at rather infrequent intervals had visited the house in question, gave testimony to the effect that they had not observed anything about the place of an immoral or improper nature. This testimony, however, was negative in character and did not preclude the Secretary of Labor from determining the issue presented adversely to appellant upon the direct and positive evidence before him.

Appellant also urges that the Secretary of Labor erroneously found that the appellant 'is an inmate of a house of prostitution' and argues that the words 'an inmate' cannot apply to a male person. Even if this argument be sound, it would avail appellant nothing, as it was merely one of the charges on which deportation was ordered. We do not agree, however, with appellant's contention in this respect. The question was before the court in *Ex parte Psimoules*, 222 Fed. 118, and we agree with the construction there given the words in question, as well as the reason assigned by the court for its conclusion (See also *United States* v. *Brough*, 15 F. (2d) 377).

As recognized by the appellant in his brief, the District Court was not the trier of the facts relevant to the issues presented. The statute itself, as well as numerous authorities, plainly makes the decision of the Secretary of Labor in deportation proceedings final. The court is without authority to weight the evidence or to substitute its judgment as to the merits of the controversy, and this court is bound by the same limitations.

The order of the District Court is AFFIRMED."

OPINION.

February 18, 1946.

Before SPARKS and KERNER, *Circuit Judges*, and BALTZELL, *District Judge*.

BALTZELL, *District Judge*. The petitioner-appellant, hereinafter referred to as the petitioner, filed a petition for a writ of habeas corpus in the district court on May 25, 1945, which petition was on June 1 dismissed on motion of respondent-appellee, hereinafter referred to as respondent. This appeal challenges the correctness of the order of the district court in dismissing the petition.

This is the second time petitioner has filed in the same district court a petition for a writ of habeas corpus, and the second time it has been before this court on appeal. The district court in the first case, after a full and complete hearing upon the merits, denied the petition. The case was appealed to this court and affirmed on October 20, 1939. *The United States of America ex rel. Constantinos Karpathiou* v. *Fred J. Schlotfeldt, District Director of Immigration and Naturalization, Chicago District*, 106 F. (2d) 928, certiorari denied 309 U. S. 681. The facts are fully discussed in the former opinion of this court, and no good purpose would be served by again reviewing them. Reference is therefore made to our former opinion (106 F. (2d) 928) for a discussion of the facts.

An examination of the record in the first case convinces us that that case was properly decided in both the district court and in this court on appeal. The same issues were

presented in the first case as in the instant case, and that decision will stand unless there is some merit in the contention of petitioner presented in his brief as to the validity of the warrant of deportation. It seems that is the only question presented which petitioner contends was not presented and decided in the first case. In that case, however, this court said, "By the proceeding it was sought to test the *validity of a warrant issued by the Secretary of Labor* for the deportation of appellant upon the ground that he is in the United States contrary to the Act of February 5, 1917, Section 155, Title 8, U. S. C. A., in that appellant 'has been found managing a house of prostitution, or music or dance hall or other place of amusement or resort habitually frequently by prostitutes or where prostitutes gather'." (Our italics.) Since that issue was decided contrary to the contention of petitioner in the first case, it would seem that this court should not be called upon again to decide the same question. However, it seems that petitioner now contends "that no valid order of deportation was ever made by any person having authority to issue such an order." This court will therefore examine that question in view of this contention.

In his brief, the petitioner says, "The record discloses that the Secretary of Labor did not direct the petitioner's deportation. Said order of deportation was signed by Turner W. Battle, Assistant to the Secretary of Labor and not by the Secretary of Labor as by the statute provided." The statute to which reference is made, at the time the warrant of deportation was issued, read in part as follows: "In every case where any person is ordered deported from the United States under the provisions of this subchapter or of any law or treaty, the decision of the Secretary of Labor shall be final." *Title 8 U. S. C. A. 155.* Petitioner further says in his brief, "We contend that the Assistant

Secretary of Labor had no authority to sign the order of deportation; that the right to sign such order is a *quasi* judicial function which cannot be delegated but can be exercised solely by the one authorized so to do by the statute * * *." No authority is cited to sustain this contention. The position of the office of Assistant to the Secretary of Labor is created by statute. Such statute reads as follows: "There shall be in the Department of Labor not more than two assistants to the Secretary who shall be appointed by the President and shall perform such duties as may be prescribed by the Secretary of Labor or required by law." *Title 5 U. S. C. A. 613(a).* This court said in the case of *Werrmann* v. *Perkins*, 79 F. (2d) 467 (C. C. A. 7), that "The point is also made that the warrant of deportation is executed by an assistant to the Secretary of Labor, whereas the statute provides that deportations shall be on the warrant of the Secretary of Labor * * *." The court then quotes Sec. 613(a) of Title 5 above, and other provisions of the statute pertaining to " 'aliens who are by law otherwise excluded from admission into the United States * * *' " and then continues, "It has been held that under these provisions the assistant to the Secretary of Labor may properly act in deportation proceedings and execute deportation warrants and that the courts will take judicial notice that certain persons were, at the time, assistants to the Secretary of Labor. *Hajdamacha* v. *Karnuth* (D. C.), 23 Fed. 2nd 956; *United States* v. *Karnuth* (D. C.), 35 Fed. 2nd 601; *United States* v. *Phelps*, (C. C. A.), 40 F. (2d) 500. We conclude that this assignment is without substantial merit." Other cases to the same effect are: *Restivo* v. *Clark*, (C. C. A. 1), 90 F. (2d) 847; *In re Giacobbi* (D. C. N. Y.) 32 F. Supp. 508, affirmed without opinion, 111 F. (2d) 297 (C. C. A. 2, 1940). There is no merit in petitioner's contention in this case

that the warrant of deportation is invalid. Such warrant is valid and enforceable.

The district court properly exercised its sound discretion in giving controlling weight to the prior decision and in dismissing the petition. *Wong Doo* v. *United States,* 265 U. S. 239, 44 S. Ct. 524, 68 L. Ed. 999; *Salinger* v. *Loisel,* 265 U. S. 224, 44 S. Ct. 519, 68 L. Ed. 989; *Pope* v. *Huff* (App. D. C., 1944), 141 F. (2d) 727; *Swihart* v. *Johnston* (C. C. A. 9, 1945), 150 F. (2d) 721; *Dorsey* v. *Gill* (App. D. C. 1945), 148 F. (2d) 857, certiorari denied 325 U. S. 890; *United States* v. *Coy* (D. C. Ky., 1944), 57 F. Supp. 661. Litigation must end, and cannot be continued indefinitely in this manner. *Wong Doo* v. *United States, supra.*

The order of the district court is AFFIRMED.